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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; 2019 Cost Recovery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; 2019 cost recovery fee percentages and mothership (MS) pricing.

SUMMARY: This action provides participants in the Pacific Coast Groundfish Trawl Rationalization Program with the 2019 fee percentages and MS pricing needed to calculate the required payments for the cost recovery fees due in 2019.

For calendar year 2019, NMFS announces the following fee percentages by sector specific program:

- 2.9 percent for the Shorebased Individual Fishing Quota (IFQ) Program,
- 0 percent for the MS Co-op Program
- 0 percent for the Catcher/Processor (CP) Co-op Program.

For 2019, the MS pricing to be used as a proxy by the CP Co-op Program is:

\$0.07./lb for Pacific whiting.

DATES: Applicable January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, Cost Recovery Program Coordinator, (503) 231-6291, fax (503) 872-2737, email

Christopher.Biegel@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires NMFS to collect fees to recover the costs directly related to the management, data collection and analysis, and enforcement directly related to and in support of a limited access privilege program (LAPP) (16 U.S.C. 1854(d)(2)), also called “cost recovery.” The Pacific Coast Groundfish Trawl Rationalization Program is a LAPP, implemented in 2011, and consists of three sector-specific programs: the Shorebased IFQ Program, the MS Co-op Program, and the CP Co-op Program. In accordance with the MSA, and based on a recommended structure and methodology developed in coordination with the Pacific Fishery Management Council (Council), NMFS began collecting mandatory fees of up to three percent of the ex-vessel value of groundfish from each program (Shorebased IFQ Program, MS Co-op Program, and CP Co-op Program) in 2014. NMFS collects the fees to recover the incremental costs of management, data collection and analysis, and enforcement of the Groundfish Trawl Rationalization Program. Additional background can be found in the cost recovery proposed and final rules, 78 FR 7371 (February 1, 2013) and 78 FR 75268 (December 11, 2013), respectively. The details of cost recovery for the Groundfish Trawl Rationalization Program are in regulation at 50 CFR 660.115 (Trawl fishery -cost recovery program), § 660.140 (Shorebased IFQ Program), § 660.150 (MS Co-op Program), and § 660.160 (CP Co-op Program).

By December 31 of each year, NMFS must announce the next year's fee percentages and the applicable MS pricing for the CP Co-op Program. NMFS calculated the 2019 fee percentages by sector using the best available information. For 2019, the fee percentages by program, taking into account the adjusted direct program costs (DPCs), are:

- 2.9 percent for the Shorebased IFQ Program,
- 0 percent for the MS Co-op Program, and
- 0 percent for the CP Co-op Program.

MS Co-Op and CP Co-Op program fee percentages are 0 percent because of the application of a credit from overpayment of cost recovery fees in prior years.

To calculate the fee percentages, NMFS used the formula specified in regulation at § 660.115(b)(1), where the fee percentage by sector equals the lower of three percent or DPC for that sector divided by total ex-vessel value (V) for that sector multiplied by 100 (Fee percentage = the lower of 3 percent or $(DPC/V) \times 100$).

'DPC,' as defined in the regulations at § 660.115(b)(1)(i), are the actual incremental costs for the previous fiscal year directly related to the management, data collection and analysis, and enforcement of each program (Shorebased IFQ Program, MS Co-op Program, and CP Co-op Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the Groundfish Trawl Rationalization Program, including both increased costs for new requirements of the program and reduced costs resulting from any program efficiencies.

"V", as specified at § 660.115(b)(1)(ii), is the total ex-vessel value, as defined at § 660.111, for each sector from the previous calendar year. The regulations define ex-

vessel value slightly differently for each sector, thus NMFS uses slightly different methods to calculate “V” for each sector. For the Shorebased IFQ Program, NMFS used the ex-vessel value for calendar year 2017 as reported in Pacific Fisheries Information Network (PacFIN) from shorebased IFQ electronic fish tickets. For the MS Co-op Program and the CP Co-op Program, NMFS uses the average price of Pacific whiting as reported in PacFIN from the shorebased IFQ sector in 2017 and the retained catch estimates (weight) from the observer data, as reported in the North Pacific Observer Program database. NMFS does not collect pricing data for these two sectors so it uses the shorebased IFQ sector data as a proxy.

Redetermination of Past DPCs and Adjustment of DPCs

On August 10, 2016, the U.S. Court of Appeals for the Ninth Circuit issued its opinion in *Glacier Fish Co. LLC v. Pritzker*, 832 F.3d 1113 (9th Cir. 2016), a case involving a challenge to NMFS' authority to collect cost recovery fees from members of the CP Co-op Program and the reasonableness of NMFS' calculation of the CP Co-op Program's 2014 fee percentage. In response to the court decision, NMFS re-evaluated and modified the methodology used to determine the CP Co-op Program's DPC for the 2014 fee calculation. NMFS elected to apply a similar revised methodology for all programs for 2014-2016 to redetermine the DPC for those years and to continue to use the revised methodology for all programs going forward, including the 2017-2019 fee calculations.

The redetermination resulted in overpayments of the cost recovery fee by the CP and MS Co-op Programs. NMFS adjusted the fees for these two sectors in subsequent years to account for this overpayment, as specified at § 660.115(b)(1)(i).

In addition, for the 2019 fee calculation, the NMFS Northwest Fishery Science Center (NWFSC) determined that some of the observer hours attributed to the CP Co-op Program in 2017 were not incremental. Therefore, these hours were removed and used as a \$1,207 credit to the 2018 CP Co-op Program DPC in the 2019 fee calculation. This credit is reflected in the NWFSC initial DPC.

Based on the estimated fees received in 2018 and adjustments for overpayments by the MS and CP Co-op Programs, the adjusted DPCs for 2019 are:

	Total by sector	2017 Fee Adjustment	Final Sector Totals
IFQ	\$1,753,653.57	\$0.00	\$1,753,653.57
MS	\$71,400.39	-\$145,328.85	-\$73,928.46
CP	\$47,178.23	-\$116,563.48	-\$69,385.25

The fee calculations using the adjusted 2018 DPCs are described below.

Shorebased IFQ Program:

2.9 percent = the lower of 3 percent or $(\$1,753,653.57 / \$60,624,195.00) \times 100$

MS Co-op Program:

-0.7 percent = the lower of 3 percent or $(-\$73,928.46 / \$11,350,915.58) \times 100$

CP Co-op Program:

-0.3 percent = the lower of 3 percent or $(-\$69,385.25 / \$24,656,732.10) \times 100$.

The 2019 fee percentages for the MS and CP Co-op Programs will be set at 0.0 percent to reflect the application of a credit from overpayment of cost recovery fees in prior years.

MS pricing is the average price per pound that the CP Co-op Program will use to determine their fee amount due (MS pricing multiplied by the value of the Pacific whiting harvested by the vessel registered to a CP-endorsed limited entry trawl permit, multiplied by the CP fee percentage, equals the fee amount due). MS pricing is based on the

average price per pound of Pacific whiting as reported in PacFIN from the shorebased IFQ sector. In other words, data from the IFQ fishery was used as a proxy for the MS average price per pound to determine the MS pricing used in the calculation for the CP Co-op Program's fee amount due. NMFS has calculated the 2019 MS pricing to be used as a proxy by the CP Co-op Program as: \$0.07/lb for Pacific whiting.

Cost recovery fees are submitted to NMFS by Fish buyers via Pay.gov (<https://www.pay.gov/paygov/>). Fees are only accepted in Pay.gov by credit/debit card or bank transfers. Cash or checks cannot be accepted. Fish buyers registered with Pay.gov can login in the upper left-hand corner of the screen. Fish buyers not registered with Pay.gov can go to the cost recovery forms directly from the website below. The links to the pay.gov forms for each program (IFQ, MS, or CP) are listed below:

IFQ: <https://www.pay.gov/public/form/start/58062865>

MS: <https://www.pay.gov/public/form/start/58378422>

CP: <https://www.pay.gov/public/form/start/58102817>

As stated in the preamble to the cost recovery proposed and final rules, in the spring of each year, NMFS will release an annual report documenting the details and data used for the above calculations. The report includes information such as the fee percentage calculation, program costs, and ex-vessel value by sector. The 2017-2018 annual report was delayed until November 2018 to allow for changes to the report following discussions with members of industry. Annual reports are available at:

http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/rules_regulations/costrecovery.html

Corrections to the 2018 cost recovery fee calculations

Between the publication of the 2018 cost recovery fees in the **Federal Register** (82 FR 61752) and the presentation of the 2017-2018 Cost Recovery Annual Report to the Council, NMFS identified two costs (totaling \$163,614.41) that had been included in the 2017 IFQ DPCs that were not recoverable. This does not affect the 2019 fees, and a description of these costs is included below as an explanation.

While reviewing the DPCs for the 2018 cost recovery fee, NMFS identified a total of \$163,614.41 in costs that were not recoverable and, therefore, removed that amount from the fee calculations. Part of that total consisted of a contracting cost of \$74,480.64, which NMFS removed because these contracting costs were to fund a database that supports both catch share and non-catch share data and is not considered incremental. The remainder, *i.e.*, \$89,133.77, was associated with a task code that staff used on their timesheet intended for cost recovery for non-recoverable tasks, and NMFS also removed that cost. Both of these costs were only associated with the Shorebased IFQ Program and their removal did not affect the 2018 fee percentage for that program because the IFQ DPC remained above the three percent cap.

IFQ DPC adjustment from the Federal Register notice announcing the 2018 cost recovery fees

\$2,179,402.10 -Original 2017 IFQ DPC

-\$163,614.41 -Adjustment to the 2017 IFQ DPC

\$2,015,787.69 -Adjusted 2017 IFQ DPC

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C.773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

Dated: December 19, 2018.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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